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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MR. AND MRS. RALPH DeGROOT,)
Appellants,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 79-19

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, an appeal from the denial of a flood control zone permit application, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (presiding), at a formal hearing in Tacoma, Washington on February 16, 1979. Each party waived its right to a 20-day notice of hearing.

Appellants were represented by their attorney, Nathan Neiman; respondent was represented by Robert E. Mack, Assistant Attorney General. Witnesses were sworn and testified. Exhibits were admitted.

DA/LB

1 Having heard the testimony, having examined the exhibits,
2 and having considered the contentions of the parties, the
3 Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent is an agency of the State of Washington created
7 and existing under the provisions of chapter 43.21A RCW and vested
8 by said chapter with the powers, duties and functions provided
9 for in chapter 86.16 RCW, the State Flood Control Zone Statute.

10 II

11 Appellants own real property within Snohomish County,
12 Washington, located in the southeast quarter of section 36,
13 township 28 north, range 8 E.W.M. and commonly known as
14 14412 - 387th Avenue S.E., Gold Bar. The real property of appellants
15 is located along the banks of May Creek and lies entirely within
16 the boundaries of a state flood control zone, namely Skykomish River
17 Flood Control Zone No. 5. Skykomish River Flood Control Zone No. 5
18 was established by written order, describing the lands included
19 therein, entered in 1935.

20 III

21 Appellants acquired an option to purchase this property
22 in November of 1976 and purchased it in November of 1978 with the
23 objective of locating a mobile home thereon for their personal
24 residence.

25 IV

26 Appellants propose to place their mobile home upon cement

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1 blocks on a gravel bed. The wheels and tongue of the mobile home
2 are to remain attached to the body of the structure. The mobile
3 home will not be permanently affixed to the ground. Appellants believe
4 that their mobile home could be moved on 2-1/2 hours notice.

5 Some of the other adjacent residences are more vulnerable than
6 appellants to the effects of a 100-year frequency flood.

7 V

8 On November 22, 1978 appellants put earnest money down on
9 a new mobile home. On December 18, appellants submitted their
10 septic system field design to the Department of Sanitation and
11 the Planning Commission of Snohomish County. The design, which
12 cost \$125, was approved on December 20, 1978.

3 VI

14 On December 27, 1978 respondent was informed by letter from the
15 U.S. Army Corps of Engineers (hereafter Corps of Engineers) that an
16 area which included the appellants' site lay within a flood hazard
17 area. The Department of Ecology's employee was unaware of the letter
18 when he visited appellants' site on January 17.

19 VII

20 On January 17, 1979 appellants learned from the
21 Snohomish County Planning Department that a flood control
22 zone permit from the state was necessary for the establishment
23 of a mobile home on their lot and filed an application for it
24 with the county. Appellants requested a temporary permit for a period
25 of six years. Also on January 17, Mr. DeGroot met an employee from
26 the Department of Ecology regarding a protest to a water right permit,

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1 and took the occasion to show the employee the proposed location of
2 the mobile home and to get impressions from the employee regarding the
3 likelihood of approval of the flood control zone permit application.
4 The employee believed that a 75-foot setback from the creek appeared
5 reasonable but that he knew the Corps of Engineers was studying the
6 area. He also said that he could not then give approval at the site.

7 VIII

8 On January 18, appellants began installation of the septic
9 system for their mobile home and have invested \$1,040 thus far
10 in it. A gravel bed was also made for the mobile home and a
11 built-up road was constructed. On January 23, appellants sold
12 their home located adjacent to the mobile home site. They are
13 required to leave their home on February 28, 1979.

14 On January 25, appellants learned that the county had
15 not forwarded their application for a flood control zone permit to the
16 state. The application reached the Department of Ecology on January 26.

17 On January 26, appellants paid \$120 to the PUD for
18 electrical service to the mobile home site. On January 31,
19 appellant, placed their full down payment of \$3,500 on their
20 mobile home.

21 IX

22 Respondent uses the Corps of Engineers' expertise
23 in matters relating to flood control. Respondent requested
24 information from the Corps of Engineers on appellants'
25 application and received a written response which was unfavorable
26 to appellants. The Corps of Engineers' preliminary analysis,

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1 which was not yet published or approved, predicted a 20,000
2 cubic feet per second overflow from the Skykomish River to
3 May Creek and the adjacent Wallace River during a 100-year
4 frequency flood, and that the proposed mobile home site would be
5 inundated by the overflow. The overflow path will be designated
6 as a floodway by the Corps of Engineers which would preclude
7 obstructions and residential construction in the path. Respondent's
8 employee visited the site and surrounding area to confirm the
9 Corps of Engineers' analysis. Other studies available to respondent
10 did not involve the instant mobile home site. A 1967 report
11 available to respondent was based on a 50-year frequency flood,
12 rather than a 100-year frequency flood now used as a standard.

3 X

14 Based upon the information available to respondent, and
15 upon consultation with the Corps of Engineers, respondent determined
16 that the mobile home site was in the 100-year floodway although the
17 precise boundary between the floodway and floodway fringe area
18 was not established. On February 8, 1979, respondent issued an
19 order denying appellants' flood control zone permit application because
20 it would not issue a permit for "permanent residences for human habitation
21 lying within a stream's floodway." The order was thereafter appealed
22 to this Board.

23 XI

24 Pursuant to WAC 508-60-030, respondent determines the
25 geographical limits of a floodway and floodway fringe upon receipt
26 of a completed application for a permit for construction of works

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1 or structures in a flood control zone.

2 XII

3 Any Conclusion of Law which should be deemed a Finding
4 of Fact is hereby adopted as such.

5 From these Findings the Board comes to these

6 CONCLUSIONS OF LAW

7 I

8 Appellants contend that RCW 86.16.050 requires that
9 floodways be established by published quadrangle maps:

10 The quadrangle maps published by the
11 United States geological survey and
12 showing elevation contours shall be
13 considered competent information upon
14 which may be based the area and boundaries
of watersheds for the establishment of
flood control zones hereinafter provided
for.

15 The above provision refers to establishment of flood control
16 zones and not "floodways" or "floodway fringe" boundaries,
17 which are included within a flood control "zone." Permits are
18 not granted or denied based upon these maps, but upon considerations
19 set forth in chapter 508-60 WAC. The determination of the
20 "floodway" and "floodway fringe" within a flood control zone is
21 made on a case by case basis by respondent in accordance with
22 WAC 508-60-030, and not under RCW 86.16.050.

23 II

24 Appellants did not prove that respondent erred in its
25 determination that the proposed mobile home site was located in
26 the 100-year floodway of the Skykomish River.

27 FINAL FINDINGS OF FACT,
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III

WAC 508-60-040(4), which is the only ground upon which respondent's denial was based, imposes the following requirement: "The structures or works are not designed for, or will not be used for either (a) human habitation of a permanent nature"

The terms structure and works are defined in WAC 508-60-010:

(7) "Structure" shall mean any building, house, apartment, factory or other structure attached to or affixed upon the realty;

(8) "Works" shall mean any dam, wall, wharf, embankment, levee, dike, pile, bridge, improved road, abutments, projection, excavation, channel rectification, conduit, culvert, wire, fence, rock, gravel, refuse, fill or other similar development attached to or affixed upon the realty;

. . . .

A permit is required if a person seeks to construct, reconstruct, or modify any "works or structures" upon the floodway. WAC 508-60-040. If no "works or structure" is to be constructed, then no permit is required. This Board has earlier said that "human habitation of a permanent nature" included a summer home and compared it with a mobile home:

"A summer home, such as sought in the instant matter, is a structure of permanency; that is, it is not readily removable, as a mobile home would be."

Jarose v. Department of Ecology, PCHB No. 79. This is not to say that all mobile homes are not of a permanent nature. In this case, appellants have requested a temporary permit for the mobile home which they contend is not a "work or structure."

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1 Having applied for a permit, it must be assumed that state
2 permission for a work or structure was requested; the subject
3 matter of this appeal involves a denial of the permit application.
4 It is evident that appellants seek to use their mobile home
5 continuously, that is, occupancy or habitation of a permanent
6 nature. From this we conclude that WAC 508-60-040(4) requires that
7 the permit application be denied. The department's order should
8 therefore be affirmed.

9 We observe that a mobile home which is a mobile structure
10 not attached to or affixed upon the realty would not require a
11 permit. It appears, though we are not certain, that appellants'
12 mobile home will remain readily mobile and may thereby obviate the need o
13 a permit. In any event, the department's order denying appellants
14 a permit should not prevent them from parking a mobile structure
15 upon their property.

16 IV

17 Any Finding of Fact which should be deemed a Conclusion
18 of Law is hereby adopted as such.

19 From these Conclusions the Board enters this

20 ORDER

21 The Department of Ecology order denying the flood control
22 zone permit application is affirmed.

23 DONE this 23RD day of February, 1979.

24 POLLUTION CONTROL HEARINGS BOARD

25 Dave J. Mooney
DAVE J. MOONEY, Chairman

26 Chris Smith
CHRIS SMITH, Member

27 David Akana
DAVID AKANA, Member

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